DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb1927/1dn
RM/PJD:cjs:jf

June 29, 2001

Representative Black:

This bill contains a redraft of 1999 AB–101 (disclosures from credit card records), except that this bill permits disclosures by credit reporting agencies and disclosures to affiliates. To the extent that these provisions apply to banking institutions that issue credit cards, they may be preempted by the federal Gramm–Leach–Bliley Act. See 15 USC 6807 (a). Although this federal law permits states to regulate financial privacy of financial institution records, certain state regulations may be preempted to the extent that they improperly conflict with the federal law. A provision that affords any person greater protection than that provided under the federal law is not preempted. See 15 USC 6807 (b). This determination is made by the federal trade commission (FTC).

Second, even if these provisions are not preempted, the department of justice may be prevented from enforcing them against federally chartered financial institutions. It is possible that the appropriate federal regulator of a federally chartered financial institution may have the sole authority to enforce these provisions against that institution. See *The National State Bank, Elizabeth, N.J. v. Long*, 630 F.2d 981 (3rd Cir. 1980) (although the state anti–redlining law applied to national banks, the federal comptroller of the currency had sole authority to enforce the state law against national banks).

Please feel free to call if you have any suggested changes to the bill or would like to discuss any of these issues.

Robert J. Marchant
Legislative Attorney
Phone: (608) 261–4454
E–mail: robert.marchant@legis.state.wi.us

The language of proposed s. 13.0991 (7) to the effect that a bill for which a privacy impact statement is required or requested may not be heard or reported by a standing committee to which the bill is referred until the statement is received creates a rule of

procedure under article IV, section 8, of the constitution. The supreme court has held that the remedy for noncompliance with this type of provision lies exclusively within the legislative branch. See *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 363–369 (1983). In other words, while this type of provision may be effective to govern internal legislative procedure, the courts will not enforce this type of provision and it does not affect the validity of any enactment resulting from a procedure that may be viewed as contravening the provision.

Atty. Peter J. Dykman
General Counsel
Phone: (608) 266–7098
E–mail: peter.dykman@legis.state.wi.us